MHNG110009882022

ORDER BELOW EXHIBIT NO. 1
(28th day of November, 2022**)**

1. This is an application filed by the applicant under Section 457 of Criminal Procedure Code to hand over possession of ***vehicle i.e. TIPPER IN MODEL NO. TATA LPK 2518 CRE BSIV*** detained by Veltur Police Station. According to applicant, Veltur Police Station have detained ***TIPPER IN MODEL NO. TATA LPK 2518 CRE BSIV*** bearing Registration No. **MH-40-BL-2486, Chasis No. MAT448236KAA01781 and Engine No. 81A84851082.** According to applicant, due to detention of said Tipper his earning is stopped and he is facing problems to earn bread and butter. Moreover, he contended that the spare parts of his said Tipper is diminishing due to its non use and impact of dust and heat as the said Tipper is kept at Police of Veltur Police Station. Thus, he prayed to hand over the said Tipper to him.

2. Perused the say of A.P.P. and A.P.I. Satish Patil, Police Station, Veltur. The A.P.P. took objection to release the said Tipper. The A.P.I. submitted that no offence is registered in relation to said Tipper the same is kept at Police of Veltur Police Station as per directions of Tahsildar Kuhi. Police of Veltur Police Station contended that they have not seized the said vehicle. Tahsildar Kuhi has not filed his say, therefore, the application is proceeded without say by Non-applicant No.1 i.e. Tahsildar, Kuhi. The learned A.P.P. and Police Inspector of

Veltur Police Station prayed for rejection of application filed by the applicant on the ground of recovery of proposed fine.

3. According to non-applicant, the said Tipper was found to be carrying Sand without permission and payment of royalty. Therefore, they have to pay fine under section 48(8)(2) of the Maharashtra Land Revenue Code.

On perusal of matter, it appears that firstly, if the Tipper was detained under section 207 of the Motor Vehicles Act, it was incumbent upon the Police Officer to have reported the seizure to the Magistrate. Though, the Tipper was detained under section 207 of the Motor Vehicles Act, failure to report the seizure to the Magistrate and the detention of the said vehicle, therefore, is not in accordance with law.

Provisions of Section 114 of the Motor Vehicles Act, dealing with checking of the Motor Vehicle for over-loading are power which is conferred on any officer of the Motor Vehicles Department, who is authorized in this behalf by the State Government. Obviously, the respondents could not either detain or seize the vehicle for breach of section 114 of the Motor Vehicles Act. Similarly, in so far as non payment of recovery is concerned, the respondents did not have the authority in law to detain the vehicle and ask the petitioner to deposit the fine with the Tahsildar, as well as with the Regional Transport Officer for violation of section 114 of the Motor Vehicles Act. The respondents ought to have produced the vehicle before Tahsildar and handed over custody thereof to the authority competent in law to impose fine or to prosecute the petitioner. Indefinite detention of the vehicle in the Police Station from 09.10.2022 is illegal against the provisions of law. There is no justifiable reason, whatsoever, for detention of the said vehicle. If, the petitioner was found to have committed any cognizable offence, the vehicle ought to have been seized in accordance with law and a report in respect such seizure ought to have been submitted to this court and a charge sheet ought to have been filed against the petitioner. The respondents neither intimated this court about the seizure of the vehicle, nor any charge sheet was filed against the petitioner. In fact, no offence was registered against the petitioner till today. Moreover, the provisions of the Maharashtra Land Revenue Code, seizure has to be made by an officer of Tahsildar. But this is not the case and it is an admitted fact here. So, the basic action itself in the present case is illegal and as such the whole action which suffers without foundational error has also stood vitiated. Therefore, I find that the detention of the vehicle by the respondents is wholly illegal, arbitrary and cannot be sustained in the eyes of law. The vehicle of the petitioner, therefore, needs to be released forthwith.

However, in so far as the question in respect of contravention of section 48(8)(2) of the Maharashtra Land Revenue Code, as well as the failure to pay royalty on minor minerals is concerned, the competent authority would be at liberty to proceed against the petitioner in accordance with the law for the breach of the said provisions. However, the competent authorities would be liberty to proceed against the petitioner for any offence which is alleged to have been committed by the petitioner. Resultantly, this petition is deserves to be allowed.

4. Needless to say that, the seized said vehicle which is *Tipper* used to earn the daily needs of the applicant. It was detained without registering any offence. Moreover, the applicant placed on record- copy

of Registration Certificate of Tipper bearing No. MH-40-BL-2486, copy of Insurance Certificate of said Tipper, copy of Royalty of said Tipper, copy of Tracking Report, copy of letter from the applicant to the Tahsildar, Kuhi, copy of letter from the applicant to the Officer of Umrer, copy of letter from from the applicant to the Tahsildar, Kuhi, copy of report to the Tahsildar, Kuhi, copy of letter from the applicant to the Police Officer of Umrer, copy of notice from the Tahsildar Kuhi to the applicant, copy of notice from the Tahsildar, Kuhi to the Police Inspector, Police Station, Veltur, copies of notice to the applicant, copy of letter from applicant to the Tahsildar, Kuhi and Adhar Card of applicant namely Prashant Urkuddash Dahiwale alongwith list Exh.4. On perusal of record shows that the said Tipper is registered in the name of said applicant. Nothing on record to show actual confiscation by the Tahsildar Kuhi in relation to the present Tipper. In such circumstances, as the said applicant showed his entitlement to possess the said Tipper, this is fit case to handover the said Tipper on the following conditions. Hence, I pass the following order.

O R D E R

The seized ***TIPPER IN MODEL NO. TATA LPK 2518 CRE BSIV*** *bearing R.T.O. Registration* No. **MH-40-BL-2486** is detained by Veltur Police Station be given to applicant namely ***Prashant S/o Urkuddash Dahiwale*** on executing indemnity bond for Rs.**20,00,000/-** (Rupees Twenty lacs only) on the following conditions :-

a) Applicant shall execute an indemnity bond stating that he will produce the said Tipper as per order of court in case of need in relation to the present case.

b) The applicant shall not alienate, transfer or change the nature of the above mentioned Tipper till disposal of the case.

c) He must produce the said Tipper as and when required by Veltur Police Station or this court.

d) The applicant should not make use of the said Tipper for any commission of crime of similar nature.

2) The Police Inspector Shri. Satish M. Patil, Veltur Police Station is hereby directed to cause to take the photographs of the said Tipper and cause to prepare detail panchanama of releasing the said Tipper in the custody of the said applicant.

3) Assistant Superintendent is directed to attach the indemnity bonds and record and proceedings of present application in record room as per rule.

Dt. 28th November, 2022.

(Smt. M.C. Shaikh)
Judicial Magistrate, First Class,
Kuhi.

CERTIFICATE

I affirm that, the contents of this PDF file order of Supratnama are same word to word, as per the original order.

Name of Stenographer : *Suresh Shankarrao Koramkar.*
Attached to Civil Judge, Jr. Dn. & JMFC.
Kuhi.